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Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Resumed session

Summary record of the 4th meeting

Held at Headquarters, New York, on Tuesday, 9 June 2009, at 10 a.m.

Chairman: Mr. Davies (Vice-Chairman) ..... (Sierra Leone)

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In the absence of Mr. Natalegawa (Indonesia), Mr. Davies (Sierra Leone), Vice-Chairman, took the Chair.

The meeting was called to order at 10.20 a.m.

Adoption of the agenda

1. *The agenda was adopted.*

Question of Gibraltar (A/AC.109/2009/15)

2. **The Chairman** informed the Committee that the delegation of Spain had indicated its wish to participate in the Committee's consideration of the item.

3. **Mr. Virella** (Observer for Spain) said that his Government was fully committed to decolonization, in particular to the decolonization of Gibraltar. Gibraltar was the only Non-Self-Governing Territory maintained by a European State on the territory of another European State, both of which were member States of the European Union and of the North Atlantic Treaty Organization (NATO). The situation in Gibraltar was colonial in nature and was therefore incompatible with the principles and objectives of the Charter of the United Nations. The situation, which undermined the national unity and territorial integrity of Spain, was governed by the Treaty of Utrecht, a valid treaty that had been accepted by Spain and the United Kingdom, under which Gibraltar had only one option: to continue being British, or to revert to Spain.

4. The United Nations had had a clear mandate regarding Gibraltar since 1964, and took decisions each year urging the United Kingdom and Spain to undertake bilateral negotiations to find an agreed solution that took the interests of the colony's inhabitants into account. In accordance with that mandate, the Government of Spain was keen to renew negotiations with the United Kingdom in the framework of the Brussels Process.

5. His Government believed that the Committee's work was still very relevant and that the Committee should continue to work within the parameters of United Nations doctrine and in accordance with its mandate despite any declarations to the contrary. Spain supported the Chairman's intention to take a realistic approach and take into account the specific characteristics of each Territory on a case-by-case basis. Gibraltar should not be removed from the Committee's list, since doing so would jeopardize the process established by the United Nations on the basis of a so-called modern constitutional relationship that was in fact no more than "colonialism by consent" and did not comply with either the spirit or the letter of the resolutions.

6. Despite the scanty progress achieved in the decolonization of Gibraltar, the Forum for Dialogue on Gibraltar had been successful. Spain remained fully committed to that process, started in 2004, aimed at resolving through cooperation the local issues affecting the well-being of the people of Gibraltar and the surrounding area. It hoped that the agreements reached at the Forum for Dialogue would contribute to creating an atmosphere conducive to resolving the questions of sovereignty, separately, in the framework of the Brussels Process. Spain remained committed to negotiating with the United Kingdom, at the United Nations, so the General Assembly could again approve its consensus decision on Gibraltar, since that was the only way that a definitive solution to the question of Gibraltar could be found.

Hearing of petitioners

7. *At the invitation of the Chairman, Mr. Bossano (Leader of the Opposition, Gibraltar), took a seat at the petitioners' table.*

8. **Mr. Bossano** (Leader of the Opposition, Gibraltar) noted that participants at the recent regional seminar held in Saint Kitts and Nevis had been told that the successful conclusion of the internal constitutional modernization exercise in the British Virgin Islands might entitle that Territory to achieve decolonization. Indeed, although there had been much talk throughout both International Decades for the Eradication of Colonialism of the need to explore innovative means of decolonization for the remaining 16 Non-Self-Governing Territories, Spain appeared to expect Gibraltarians to accept that their rights as a people should be measured by the yardstick of the Europe of 1713, instead of by 2009 values. At the regional seminar, the representative of Spain had said that he regretted not being able to report "good news", by which he meant the handing over of Gibraltarians to a foreign government, contrary to their wishes, in accordance with the Treaty of Utrecht. He had not, however, mentioned Gibraltar's failure to fully comply with the other obsolete requirements of the 1713 Treaty.

9. The other basis of Spain's claim was that the Committee had invented a territorial dispute doctrine, one which took precedence over the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the long-established international jurisprudence on decolonization and self-determination that was universally accepted as *jus cojens*. The representative of Spain had told the regional seminar that, since 1964, the mandate of the Committee had been to decolonize Gibraltar on whatever terms could be agreed between the administering power and Spain. However, in 1964 the Committee had affirmed in a statement of consensus that the Declaration on the Granting of Independence to Colonial Countries and Peoples (A/RES/1514 (XV)) was fully applicable to Gibraltar, and merely noted the existence of a disagreement between the United Kingdom and Spain. That was the so-called 1964 mandate, and not the version that Spain had been repeating for 45 years.

10. Modern democratic Spain, as Gibraltar's nearest neighbour, should respect the wishes of the people of Gibraltar and help them emerge from colonialism into a new international status and take their rightful place in the family of nations, instead of complaining because it had lost a battle in 1704 over a small piece of territory that it had captured in an earlier battle from its previous Muslim owners, who had ruled it for 750 years. However, instead of respecting and providing support for Gibraltar, in 2009, Spain had challenged the sovereignty of Gibraltar's territorial waters. Spain had always maintained that Gibraltar could not have territorial waters, since they were not provided for in the 1713 Treaty. However, even during the 16-year siege imposed in 1969, it had respected those territorial waters, never attempting to apply Spanish law to vessels anchored in them, and demarcating flight paths over them that were followed by aircraft not permitted to use Spanish air space. That had changed in 2009, when it had claimed responsibility for the environmental protection of Gibraltar's waters, which it was unable to deliver, and had made a number of incursions into its territorial jurisdiction, causing the United Kingdom, the administering Power, to take action to protect the sovereignty of the waters, as required by the Constitution of Gibraltar. He condemned Spain's aggressive act, which was incompatible with Article 74 of the Charter.

11. The Committee's statement in 1964 requesting the United Kingdom and Spain to negotiate on the question of Gibraltar was in line with Chapter VI of the Charter, which provided for the pacific settlement of disputes. However, it did not override the provisions of Chapter XI, which enshrined the rights and protections of peoples that had not yet attained a full measure of self-government. Spain continued to say that the only option available to Gibraltarians, unlike the rest of mankind, was to remain as a Non-Self-Governing Territory, either under the administration of the United Kingdom or of Spain. That would perpetuate rather than eradicate colonialism. Spain denounced "colonialism by consent", while advocating an even worse option — colonialism without consent and by imposition — as the only alternative.

12. The United Nations' definition of decolonization was clear: there could be no decolonization without self-determination. Gibraltar was on the Committee's list because it had accepted Gibraltarians as a separate people from the administering Power, as required by the provisions of resolution 1541 (XV) Principle (IV). The question before the Committee therefore concerned the nature of the relationship between the Gibraltarians and the sovereign monarch. If the people did not enjoy a full measure of self-government, the Territory was Non-Self-Governing. Determining the identity of the appropriate monarch for Gibraltar was irrelevant. Spain had been employing false arguments and was relying on the support of some of its former colonies. Those countries should note that they had more in common with Gibraltar than Spain, since they themselves had once exercised their right to determine their own future without external interference.

13. The Committee needed to use the instruments already at its disposal to assess constitutional change in Non-Self-Governing Territories, in order to comply with its duty to monitor their progress towards the achievement of a full-measure of self-government. If there was no progress to report, it was not because the Committee's criteria were archaic, as the United Kingdom claimed, but because they were not being applied. Since 1948, resolution 222 (III) on the cessation of transmission of information under Article 73 *e* of the Charter had made it clear that it was essential that the United Nations be informed of any change in the constitutional position and status of any such territory as a result of which the administering Power thought it unnecessary to transmit information

in respect of that Territory. The Committee was required to indicate whether it agreed with the United Kingdom's claim that Gibraltar's new Constitution made their relationship non-colonial and that Gibraltar was therefore no longer a Non-Self-Governing Territory. That was what should be included in the report to the Special Political and Decolonization Committee, rather than simply repeating that the matter was once again being deferred for another year. That duty was clearly set out in resolution 1970 (XVIII), paragraph 5.

14. Resolution 1541 (XV) provided for three decolonization options and a fourth was provided under resolution 2625 (XXV). Spain's preference was for a fifth fictitious option — that Gibraltar should remain a Non-Self-Governing Territory but pass under Spanish rule. That was not an option the Committee could or should support, since it ran counter to its decolonization mandate. Gibraltar was not prepared to hand over to or share with Spain even one inch of its land, one drop of its territorial waters — currently 3 nautical miles but which it had the right to extend to 12 — or its half of the Bay of Gibraltar, nor any of its sovereign airspace over its land or sea. There should be no doubt that if Spain succeeded in delaying Gibraltar's decolonization then colonialism would never be eradicated.

15. He had been enormously encouraged by the Chairman's statement at the regional seminar that the Committee needed to explore ways and means of making a better assessment of the state of decolonization and self-determination in each Non-Self-Governing Territory on a case-by-case basis. He urged the Committee to look at the question of Gibraltar as it would any of the other Territories still not enjoying a full measure of self-government.

16. *Mr. Bossano withdrew.*

17. **The Chairman** suggested that the Committee should continue its consideration of the Question of Gibraltar at its next session, subject to any General Assembly directives.

18. *It was so decided.*

The meeting rose at 10.50 a.m.